

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re

) Chapter 11

MEADOWCRAFT, INC.,

) Case No. 02-06910-TOM-11

Debtor.

)

**MOTION FOR ORDER APPROVING BONUS
AND INCENTIVE PLAN**

Meadowcraft, Inc., debtor and debtor-in-possession (the "Debtor") moves the Court for entry of an order pursuant to 11 U.S.C. §§ 105 and 363 approving a bonus and incentive program for certain employees of the Debtor. In support of its motion (the "Motion"), the Debtor shows as follows:

Background

1. On September 3, 2002 (the "Filing Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code").

2. The Debtor is operating its business and managing its affairs as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtor's bankruptcy case.

3. The Debtor is a privately-owned corporation organized and existing under the laws of the state of Delaware with its principal place of business in Birmingham, Alabama.

4. The Debtor is the leading domestic producer of casual outdoor furniture and is the

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largest manufacturer of outdoor wrought iron furniture in the world. The Debtor designs, manufactures and distributes a variety of wrought iron consumer products, including outdoor and indoor furniture and accessories, and outdoor cushions and umbrellas, which it markets to mass merchandisers and specialty stores primarily in the United States. The Debtor believes that it has established a reputation as an innovator in the design, manufacturing, distribution and marketing of moderately priced, quality wrought iron furniture.

Summary of Relief Requested

5. The Debtor seeks to adopt a bonus and incentive plan more particularly described in Exhibit A (the "Plan") attached hereto and incorporated by reference. The Debtor believes that establishing a bonus and incentive plan will prevent further attrition among the Debtor's workforce and allow the Debtor to hire adequate replacement personnel. Implementing the Plan will further assist the Debtor to aggressively develop and pursue a successful reorganization.

Jurisdiction and Notice

6. The Debtor brings the Motion pursuant to Sections 105 and 363 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334(b). The Motion is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

7. The Debtor has served a copy of the Motion on the Debtor's 20 largest unsecured creditors, counsel for the Official Committee of Unsecured Creditors, counsel for Bank of America, N.A., Chatham Investments ("Chatham"), counsel for Chatham, LaSalle Business Credit, Inc. ("LaSalle"), counsel for LaSalle, Congress Financial Corporation (Southern)

("Congress"), counsel for Congress, the Bankruptcy Administrator, and all parties requesting notice.

Relief Requested

8. The circumstances prior to the Filing Date and the eventual filing of the Debtor's bankruptcy case have reduced the morale of the Debtor's employees. Since the Filing Date, certain employees of the Debtor have sought and obtained employment with other companies. Without limitation, the Debtor has lost product design developers, engineers, sales personnel, a distribution coordinator, and other key employees. On account of the Debtor's bankruptcy filing and financial instability, the Debtor has been unable to replace the lost personnel with knowledgeable and experienced candidates. In order to develop and implement an effective business plan that will permit the Debtor to successfully reorganize, the Debtor must employ personnel knowledgeable about the Debtor's business and affairs to assist in these efforts.

9. The Debtor has determined that it must provide certain bonuses and incentives on the terms and conditions of the Plan to prevent further loss and to obtain appropriate replacements for individuals that have already left the company. By this Motion, the Debtor seeks court authority to implement the Plan. Without such relief, the Debtor's ability to preserve the value of its assets, as well as to protect its employees, will be severely jeopardized.

Summary of the Plan

10. The complete details of the Plan are attached as Exhibit A. Without limitation, the Debtor seeks to fund the Plan with \$750,000.00 of its working capital loan facility. The funds will be used to pay bonuses and incentives to existing and future employees. Under no

circumstances will any payments under the Plan be made to Samuel Blount, Marcus Watson, or Jerry Camp (together, the "Management Team"). All distributions that will be made pursuant to the Plan will be within the complete discretion of the Management Team.

Necessity of the Plan

11. As set forth in the Affidavit of Jerry Camp attached hereto as Exhibit B and incorporated by reference, the Plan is necessary to the Debtor's continued operations. The Debtor currently employs over 1,200 people. The Debtor's operations are highly labor intensive. Accordingly, the Debtor's employees are essential components to preserving the value of the Debtor for the benefit of the Debtor's estate, creditors and other parties in interest.

12. Without the Plan, the Debtor expects the morale of its employees to continue to deteriorate and to cause further attrition among the Debtor's workforce. Without a bonus and incentive program in substantially the same the form of the Plan, the Debtor will be unable to prevent personnel defections that will harm the Debtor's going concern value and potentially jeopardize the Debtor's reorganization efforts.

13. Moreover, due to the uncertainty regarding of the Debtor's future, the Debtor has had considerable difficulty attracting new employees. The funds available through the Plan will serve to enhance the Debtor's employment opportunities over those offered by other employers. Accordingly, the Debtor submits that implementation of the Plan is in the best interest of the Debtor's estate and is authorized by the Bankruptcy Code.

14. The Debtor submits that it is unreasonable to expect existing or future employees to assist in the Debtor's reorganization efforts without being able to offer competitive

compensation to those individuals. The Plan will provide incentives for the Debtor's existing employees and future employees.

15. The Debtor submits that the Plan constitutes a reasonable, fair and effective mechanism to maximize the value of its workforce and remain competitive in the marketplace. The next few months of the Debtor's bankruptcy case will be critical as the Debtor strives to develop a business plan that involves forecasting and projecting the Debtor's future sales, operating expenses, and profits.

Legal Basis for Relief Requested

16. It is generally recognized that the continuation of a stable employee base and harmonious employee relations in operating a chapter 11 case is critical to a successful reorganization. As the court noted in *In re Chateauguay Corporation*, 116 B.R. 887 (Bankr. S.D.N.Y. 1990), "[e]mployee good will and contentment is an asset which is vital to the continuation of a debtor's business operations and its ability to effectively reorganize during the Chapter 11 process." *Id.* at 898. Similarly, in *In re Gulf Air, Inc.*, 112 B.R. 152 (Bankr. W.D. La. 1989), the court recognized, "[r]etention of skills, organization and reputation for performance must be considered valuable assets contributing to going concern value and aiding rehabilitation where that is possible." *Id.* at 153.

17. As a general rule, post-petition compensation for a debtor's employees is handled in the ordinary course of business and does not require court approval. *See* 11 U.S.C. § 363(c)(1) ("[T]he trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing and may use property of

the estate in the ordinary course of business without notice or a hearing.”); *In re All Seasons Industries, Inc.*, 121 B.R. 822, 825-26 (Bankr. N.D. Ind. 1990) (“Where post-petition operations are concerned, as long as it confines itself to operating in the ordinary course of business, a debtor-in-possession’s actions are cloaked with an aura of propriety and thus the debtor is entitled to a presumption concerning the reasonableness of its decisions.”); *In re Pacific Forest Industries, Inc.*, 95 B.R. 740, 743 (Bank. C.D. Cal. 1989) (“Employees do not need court permission to be paid and are usually paid as a part of the ongoing operation of the business.”).

18. The Ninth Circuit has adopted a “horizontal dimension” and a “vertical dimension-creditor’s expectation” test to determine whether a transaction is within the ordinary course of business. *See In re Dant & Russell*, 853 F.2d 770 (9th Cir. 1988). The Plan satisfies the “horizontal dimension” test because it is the type of post-petition transaction that similar businesses would engage in as ordinary business. *See id.* at 704. The Plan also satisfies the “vertical dimension-creditor’s expectation” test because a hypothetical creditor would expect the Debtor to provide incentives to its key employees in a manner as set forth in the Plan. *See id.*

19. Assuming that the implementation of the Plan is outside the ordinary course of business and court approval is a precondition, this Court should grant the Motion under the authority of Section 363(b) of the Bankruptcy Code, which provides, “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” In determining whether to authorize a use of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies its action and is a reasonable exercise of the debtor-in-possession’s business judgment. *See, e.g., Institutional Creditors of Continental Airlines, Inc. v. Continental Airlines, Inc. (In re Continental Airlines,*

Inc.), 780 F.2d 386, 390 (5th Cir. 1986); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) *In re Crystal Apparel*, 207 B.R. 406, 410 (S.D.N.Y. 1997) (“[C]ourts must exercise great deference in reviewing a corporation’s desire to pay its employees.”). Though a bankruptcy court has wide latitude in approving a transaction under Section 363(b) of the Bankruptcy Code, *see In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674-78 (Bankr. S.D.N.Y. 1989), Section 363(b) of the Bankruptcy Code does not require that the court substitute its judgment for that of a debtor in possession. *See id.* at 678. Accordingly, when determining whether to oppose the Plan, the Court should ascertain whether the debtor has articulated a valid business justification for the proposed transaction. *See, e.g., Lewis v. Anderson*, 615 F.2d 778, 781 (9th Cir. 1979).

20. In *In re Montgomery Ward Holding Corp.*, 242 B.R. 147 (D. Del. 1999), the debtor filed a motion for an order approving various post-petition employee incentive programs. The debtor proposed the incentive programs to effectuate the goal of retaining key employees during the bankruptcy case. *See id.* at 150. The bankruptcy court approved the programs and certain objectors appealed. On appeal, the district court affirmed the bankruptcy court’s order, holding that the programs satisfied the “business judgment” test under Section 363(b) of the Bankruptcy Code. *See id.* at 153-55. First, the district court rejected the argument that the debtor needed to show a reasonable prospect of successfully reorganizing as a prerequisite for approval under Section 363(b). *See id.* at 154-55. Second, the district court held that the debtor exercised sound business judgment in proposing the programs because the programs stabilized employee turnover rate, boosted employee morale and retained key employees. *See id.* at 155.

21. Similarly, in *In re Interco*, 128 B.R. 229, 234 (Bankr. E.D. Mo. 1991), the court

approved a performance-based key employee retention program offered to 130 employees at a cost of \$5.6 million. The *Interco* court also applied the business judgment standard, stating, “there is no reason at this time to interrupt [the debtors’] momentum toward reorganization or to delay portions of these incentive programs, which the debtors seek to implement pursuant to the Motion. The debtors’ business judgment in these matters is accepted.” *See id.* at 234.

22. The Court, *In re America West Airlines, Inc.* 171 B.R. 674 (Bankr. D. Ariz. 1994) approved substantial confirmation bonuses (\$400,000 to the chief operating officer, \$1.2 million to 28 officers and \$9.5 million to 11,000 rank and file employees) where the debtor had determined that these employees had been and continued to be vital to the reorganization process. The court stated:

[T]he Debtor has exercised its business judgment in proposing success bonuses. It is a proper use of the Debtor’s business judgment to propose bonuses for employees who helped propel the Debtor successfully through the confirmation process . . . The Court finds and concludes that the proposed bonuses will aid continuing the momentum that the Debtor has gained up to and through the confirmation process as the financing from AmWest is successfully closed.

Id. at 678.

23. As in the *Montgomery Ward*, *Interco* and *America West* cases cited above, the circumstances here (including substantial turnover/attrition rate, the importance of stabilizing attrition and low employee morale) establish that implementation of the Plan constitutes a valid exercise of the Debtor’s business judgment. In order to preserve the ongoing concern value of its operations and achieve the optimum outcome for the bankruptcy case, the Debtor must have qualified employees running the business during the progress of this case. Implementation of the

Plan will help prevent employee turn-over, decrease costs associated with replacing management and key employees, help stabilize operations and boost employee morale during this time of uncertainty and risk. The Debtor has carefully examined its staffing needs in conjunction with the current employment market and has determined that the Plan is the most effective means of retaining key employees so as to ensure efficient day-to-day operations, and maintaining the Debtor's going concern value.

24. In the Debtor's business judgment, the Plan should be approved. The Debtor's ability to maintain its business operations and preserve an enhanced value for its estate is dependent upon the continued employment, active participation, and dedication of its employees, who possess the knowledge, experience, and skills necessary to support the Debtor's business operations. As with any business, the Debtor's employees are sensitive to increased uncertainty regarding the Debtor's future operations and each individual's job security. In order to avoid the potentially devastating loss of employees, the Debtor must ensure that its employees are provided with adequate security and an incentive for continuing to work through the restructuring process.

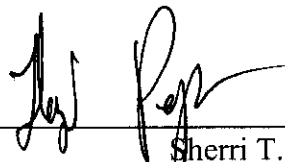
25. Furthermore, the Plan is fair and reasonable under the circumstances. The Plan's details were developed by the Management Team, (all of whom have voluntarily renounced themselves from participation in the Plan) after consultation with the Debtor's professionals.

26. Thus, in the exercise of its business judgment, the Debtor believes that the Plan is necessary to retain certain key employees and provide such employees with an incentive to continue to provide the highest level of service.

Conclusion

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully requests the Court to enter an Order authorizing the Debtor to establish and implement the Plan and for such other, further and different relief as may be just and proper.

Respectfully submitted this 20th day of December, 2002.



Sherri T. Freeman
Lloyd C. Peeples, III

OF COUNSEL:

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1819 Fifth Avenue North
Birmingham, Alabama 35203
(205) 521-8000

EXHIBIT A

Bonus and Incentive Plan for Meadowcraft, Inc.

WHEREAS, on September 3, 2002 (the "Filing Date") Meadowcraft, Inc. ("Meadowcraft") filed a petition under chapter 11, title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division (the "Bankruptcy Court"); and

WHEREAS, Meadowcraft is managed by Samuel R. Blount, Jerry Camp and Marcus A. Watson (the "Management Team"); and

WHEREAS, since the Filing Date, certain employees of Meadowcraft have left Meadowcraft and accepted positions with other employers offering jobs with more security and stability; and

WHEREAS, Meadowcraft is encountering difficulties in hiring adequate replacement personnel; and

WHEREAS, Meadowcraft is currently attempting to develop a business plan and strategy for restructuring its operations; and

WHEREAS, the Management Team desires to develop a bonus and incentive plan in order to retain key personnel and/or to assist in the hiring of replacement personnel for key positions which are or become open;

NOW, THEREFORE, Meadowcraft has adopted the following bonus and incentive plan on the following terms and conditions:

I. Introduction

In connection with its chapter 11 reorganization proceeding, Meadowcraft desires to establish a bonus and incentive plan for selected employees (the "Plan"). The Plan is intended to provide incentives to Meadowcraft's employees to prevent key personnel from seeking other employment options and to induce new employees to join the Meadowcraft team.

II. Total Amount of Funds Available Under the Plan

Subject to the approval of the Bankruptcy Court, Meadowcraft shall escrow \$750,000 (the "Plan Funds") solely for the purpose of making payments under the Plan.

III. Eligibility

Although all employees, except those on the Management Team, employed as of the date the Bankruptcy Court approves the Plan or hired thereafter shall be eligible to receive payments under the Plan, the Plan Funds shall be distributed only to employees (if any), and in such amounts (if any), as may be determined in the sole and absolute discretion of the Management Team.

IV. Source of Funding for the Plan Funds

The Plan Funds shall be drawn from Meadowcraft's post-petition working capital credit facility.

V. Escrow of Plan Funds

The Plan Funds shall be held in escrow in an interest bearing account until the Payment Date (as defined hereinafter). The Plan Funds shall not be subject to attachment by any of Meadowcraft's creditors and shall not be collateral for any of Meadowcraft's secured obligations.

VI. Distribution Date

Any distribution of the Plan Funds shall be distributed by the Management Team during the month of September 2003 (the "Payment Period"). Any Plan Funds not distributed before the end of the Payment Period shall be transferred to the Debtor's operating account or as otherwise directed by the Bankruptcy Court.

VII. Limitations on Distributions

Although the distributions shall be in its sole and absolute discretion of the Management Team, no one employee of Meadowcraft shall receive more than \$50,000.00.

VIII. Conditions

The Plan is subject to the approval of the Bankruptcy Court.

Meadowcraft, Inc.

By: _____

Title: _____

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re)	Chapter 11
)	
MEADOWCRAFT, INC.,)	Case No. 02-06910-TOM-11
)	
Debtor.)	

**AFFIDAVIT OF JERRY CAMP IN SUPPORT OF
MOTION TO ADOPT BONUS AND INCENTIVE PLAN**

STATE OF ALABAMA)	
	:	
JEFFERSON COUNTY)	

Personally appeared before me, the undersigned attesting officer authorized by law to administer oaths, Jerry Camp, who, after being duly sworn, states as follows:

1. My name is Jerry Camp. I am over the age of 21 years. I give this Affidavit in support of the Motion to Approve Bonus and Incentive Plan (the "Motion") filed by Meadowcraft, Inc., debtor and debtor-in-possession (the "Debtor"). In September 2002, I was hired by the Debtor as Chief Executive Officer.

2. I am familiar with the day-to-day operations of the Debtor and its business, financial, and operational affairs. The facts in this Affidavit are based on my personal knowledge and experience of the Debtor's operations and financial conditions or my experience and knowledge of the industry and general market conditions. If called to testify, I would testify to the facts set forth herein.

3. The Debtor is a privately-owned corporation organized and existing under the laws of the state of Delaware with its principal place of business in Birmingham, Alabama.

4. The Debtor is the leading domestic producer of casual outdoor furniture and is the largest manufacturer of outdoor wrought iron furniture in the world. The Debtor designs, manufactures and distributes a variety of wrought iron consumer products, including outdoor and indoor furniture and accessories, and outdoor cushions and umbrellas, which it markets to mass merchandisers and specialty stores primarily in the United States. The Debtor believes that it has established a reputation as an innovator in the design, manufacturing, distribution and marketing of moderately priced, quality wrought iron furniture.

5. The Debtor offers consumers a wide variety of products across different price points in three markets: the outdoor mass market under the Plantation Patterns brand name; the outdoor specialty market under the Meadowcraft, Arlington House, and Salterini brand names; and the indoor mass markets under the Home Collection from Plantation Patterns brand name.

6. The Debtor presently employs over 1,200 people. The Debtor owns manufacturing facilities in Birmingham, Jefferson County, Alabama, Wadley, Randolph County, Alabama, and Selma, Dallas County, Alabama. Prior to the Debtor filing for bankruptcy, the Debtor closed its manufacturing and distribution operations in Arizona and Mexico.

7. In the Motion, the Debtor seeks authority to enter into a bonus and incentive plan more particularly described in the Motion (the "Plan"). I, along with the assistance of Marcus A. Watson and Samuel R. Blount, developed the Plan.

8. I believe that it is imperative that the Debtor preserve the going concern value of its operations and assets in order to achieve a successful reorganization and restructuring. Given the uncertainty and risk associated with any bankruptcy case, it is necessary for the Debtor to have the most capable and knowledgeable workforce available.

9. From my conversations and observations, I have detected a significant drop in employee morale since the filing of the Debtor's bankruptcy case. Additionally, the Debtor has lost certain key employees who have left the Debtor to seek other, more stable employment. For example, in recent weeks the Debtor has lost product design developers, engineers, sales personnel, a distribution coordinator and other key employees.

10. The Debtor's efforts to replace the lost personnel have been complicated by the Debtor's pending bankruptcy case. Despite the Debtor's post-petition financing, potential employees are wary of accepting long-term employment with a bankrupt company.

11. To allow the Debtor to retain and hire key employees, the Debtor must be able to provide financial bonuses or incentives to such employees or future employees. I believe that the bonus and incentive structure set forth in the Plan will provide the Debtor with sufficient funds to prevent further attrition among the Debtor's existing workforce and to persuade future employees to accept employment.

12. Without the relief requested in the Motion, the Debtor's ability to retain certain employees will be severely diminished. The Debtor's remaining employees are critical and the Debtor requires additional help to replace the employees that the Debtor has already lost. In order to develop a reasonable and valid business plan, the Debtor must have the assistance of

employees with experience in the Debtor's industry. Simply obtaining replacement employees, even if possible under the Debtor's current financial conditions, is inadequate unless the replacements are competent and capable of offering tangible assistance to the Debtor's reorganization efforts. Without limitation, the Debtor needs personnel capable of understanding the Debtor's financing, sales, and accounts. The Debtor must be able to provide the bonuses and incentives in the Plan to attract such personnel.

13. The Debtor believes that the Plan is a reasonable, fair and effective mechanism to retain the key employees. Given the uncertainties associated with the Debtor's financial condition and the personnel needs going forward, the Debtor must provide certain existing and future employees with monetary incentives.

14. Therefore, the Debtor submits that the Plan is in the best interest of the Debtor, its estate, creditors and other parties in interest.

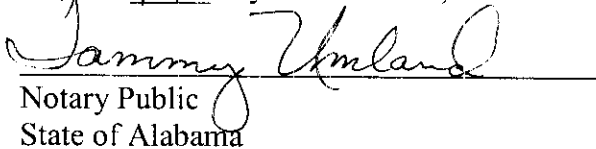
FURTHER AFFIANT SAITH NOT.

Dated: December 19, 2002.



Jerry Camp

Sworn to and subscribed before
me, this 19th day of December, 2002



Notary Public
State of Alabama

My commission expires: 3-11-06

[SEAL]